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Chair of Computer Science VI, RWTH Aachen, D-52056 Aachen

Judge Patti B. Saris  
United States District Judge  
Boston, MA  
Fax: 001 (617) 748-4582

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May 15, 2006

Re: NUANCE vs. VST, Civil Action No. 04-10353

Dear Judge Saris:

I am writing this letter based on my review of the documents and of the source code along with the two meetings I have had so far. So far the emphasis has been on the alleged copying of code along with the alleged trade secret violations, and the experience with the alleged patent infringements is more limited.

Based on this experience so far, I would like to point out some problems and issues that are arising:

- The code involved on both sides is complex and large. So it is time consuming for both the designated counsels and me to review the code.
- In addition to the alleged trade secrets in the initial brief, the Nuance party has added (or is trying to add) more trade alleged trade secrets.
- Since now it has turned out to be difficult for the parties (due to either lack of time or expertise or ...) to locate the copied portions of the code (in the context of alleged trade secret violations) or the patent infringements in the code, I have the feeling that the two parties are trying more and more to pass on this responsibility to me. In particular, the initial briefs of both parties were not yet very specific in this respect.

Therefore, in order to mitigate these problems, the following measures might be considered:

- requiring exact specifications of the source code portions involved (as mentioned in paragraph 15 of the Neutral Expert Procedure) by each party (E.g. for the alleged copying of source code and/or each alleged trade secrets, NUANCE should *exactly* specify its own relevant code and the relevant portions of the VST code.)
- limiting the number of alleged trade secret violations (say five or so) to be reviewed for my report. Maybe, a similar limitation makes sense for the alleged patent infringements.
- allowing more time for the whole procedure.
- For each party, an independent expert is surely helpful in locating these code portions. Giving such an expert access also to the other party's source code might speed up the process, but there might be other aspects that I do not overlook.

Maybe I should talk to you again on the phone. I will be back in my office on Friday, May 19.

Sincerely yours,

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(Dr. Hermann Ney, Neutral Expert)